

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/328984

MARK: HERS

77328984

CORRESPONDENT ADDRESS:

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RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Residential Energy Services, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO :

PC-2421

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE:

The Administrator for Trademark Identifications, Classification and Practice in the Office of the Commissioner for Trademarks granted a Letter of Protest received in connection with this application. The evidence presented in the letter was forwarded to the trademark examining attorney for consideration. *See* TMEP §§1715 *et seq.*

Based upon this evidence, the trademark examining attorney is taking further action, as specified below.

Trademark Act Section 2(e)(1) – Mark is Merely Descriptive

Registration is refused because the applied-for mark merely describes the subject matter of applicant's paper goods and publications. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods. TMEP §1209.01(b); *see In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987). Moreover, a mark that identifies a group of users to whom an applicant directs its goods is also merely descriptive. TMEP §1209.03(i); *see In re Planalytics, Inc.*, 70 USPQ2d 1453, 1454 (TTAB 2004).

The determination of whether a mark is merely descriptive is considered in relation to the identified goods, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (finding DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (finding CONCURRENT PC-DOS merely descriptive of "computer programs recorded on disk" where relevant trade used the denomination "concurrent" as a descriptor of a particular type of operating system). "Whether consumers could guess what the product is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

Additionally, a term that describes the subject matter of a publication is merely descriptive under Trademark Act Section 2(e)(1). *See H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed.Cir. 1986); *In re Taylor & Francis [Publishers] Inc.*, 55 USPQ2d 1213 (TTAB 2000) (holding PSYCHOLOGY PRESS merely descriptive of books in the field of psychology); *In re Waverly Inc.*, 27 USPQ2d 1620 (TTAB 1993) (holding MEDICINE merely descriptive of a journal); *In re Women's Publ'g Co.*, 23 USPQ2d 1876 (TTAB 1992) (holding DECORATING DIGEST merely descriptive for a magazine); *In re Oriental Daily News, Inc.*, 230 USPQ 637 (TTAB 1986) (holding

Chinese characters meaning ORIENTAL DAILY NEWS merely descriptive of a newspaper).

In the instant case, applicant seeks registration of HERS for “Paper goods and publications, namely, printed reports, brochures, and certificates in the fields of energy efficiency, residential energy performance, residential energy efficiency programs, residential energy efficiency financing, national standards for home energy ratings, accreditation and testing standards for home energy rating providers, and home energy rating software,” in Class 16.

Evidence

Applicant’s mark, HERS, is an acronym that is commonly used in the field of energy efficiency. The acronym stands for HOME ENERGY RATING SYSTEM. Page one of applicant’s own specimen in fact shows HERS to mean Home Energy Rating System. The specimen features a text and graphic in a box in the upper right corner. The wording HERS is positioned to the right of a map of the United States, with the wording “For more information on the national Home Energy Rating System and to find certified HERS Raters...” placed immediately below.

The State of California, among other jurisdictions, operates a HERS program. Information on the website of the California Energy Commission states the following:

The California Energy Commission is required by Public Resources Code Section 25942 to establish regulations for a Home Energy Rating System (HERS) Program to certify home energy rating services in California. The goal of the program is to provide reliable information to differentiate the energy efficiency levels among California homes and to guide investment in cost-effective home energy efficiency measures.^[1]

The U.S. Environmental Protection Agency and the U.S. Department of Energy discuss HERS as well on the jointly operated website for Energy Star. HERS is discussed as follows:

What is the HERS Index?

A home energy rating involves an analysis of a home’s construction plans and onsite inspections. Based on the home’s plans, the Home Energy Rater uses an energy efficiency software package to perform an energy analysis of the home’s design. This analysis yields a projected, pre-construction HERS Index. Upon completion of the plan review, the rater will work with the builder to identify the energy efficiency improvements needed to ensure the house will meet ENERGY STAR performance guidelines. The rater then conducts onsite inspections, typically including a blower door test (to test the leakiness of the house) and a duct test (to test the leakiness of the ducts). Results of these tests, along with inputs derived from the plan review, are used to generate the HERS Index score for the home.

The HERS Index

The HERS Index is a scoring system established by the Residential Energy Services Network (RESNET) in which a home built to the specifications of the HERS Reference Home (based on the 2006 International Energy Conservation Code) scores a HERS Index of 100, while a net zero energy home scores a HERS Index of 0. The lower a home’s HERS Index, the more energy efficient it is in comparison to the HERS Reference Home.

Each 1-point decrease in the HERS Index corresponds to a 1% reduction in energy consumption compared to the HERS Reference Home. Thus a home with a HERS Index of 85 is 15% more energy efficient than the HERS Reference Home and a home with a HERS Index of 80 is 20% more energy efficient.^[2]

Despite references to the HERS Index as a scoring system established by applicant, the acronym of HERS on its own, remains descriptive of a home energy rating system.

Further evidence of the descriptive nature of applicant’s mark can be seen on the websites of the Northeast Home Energy Rating System Alliance and USA HERS Home Energy Rating Services. Here, the acronym HERS is used repeatedly to reference the wording “Home Energy Rating System.” Examples:

Northeast Energy Rating System Alliance

NEXT NE HERS RATER TRAININGS

Remaining Training dates for 2008 are:

October 20-24 - NH Community Technical College, Laconia, NH

To receive information about these or future classes, contact us with your name, company name, address, phone, and email.

MEMBERSHIP IN THE NE HERS ALLIANCE FOR 2008

If you are interested in membership in NE HERS, we appreciate a broad range of support across the region to address the important

issues facing our industry and to be able to provide excellent training and resources. New members are always welcome! For information on NE HERS Membership go to our Who We Are page.

NE HERS 2007 RATER TRAINING AND REFERENCE MANUAL

The Northeast HERS Alliance 2007 Rater Training and Reference Manual is available for individual and discounted multi-copy orders. Among other updates, the 300+ page manual incorporates new RESNET and HERS industry technical requirements, EPA Energy Star compliance changes, and information pertaining to the 2005 Energy Policy Act: Tax Credits for builders.^[3]

USA HERS

USA HERS Home Energy Rating Services is a Florida State Certified Home Energy Rating System (HERS) rater. You've probably heard about home inspections (we do those too), a HERS testing and evaluation of a home you want to buy will tell you much more. Well, a HERS rating will tell you what to expect in annual energy costs. it will give you information concerning your heating and cooling costs, hot water costs, and much more. Click here to see a sample EnergyGauge report. Additionally, you may qualify for an Energy Efficient Mortgage (EEM) which will give you more buying power and potentially better terms. Checkout our Home Buyers Resources, we've got lots of good information that show you how to save money. Besides you'll be helping the environment at the same time.^[4]

References to HERS from the above entity do not associate the term as a source-designating term with applicant. Rather, HERS is used as an acronym for the general concept of a home energy rating system.

Conclusion

Applicant's goods cover a wide variety of paper goods and printed material concerning the subject matter or field of energy efficiency. Applicant's printed reports, brochures, and certificates discuss a home energy rating system. Finally, the evidence of record shows that HERS is commonly understood in the building and real estate industry as the name for rating systems in a home, and the term itself names the service it provides. Consequently, the mark is unregistrable on the Principal Register.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.


/Jordan A. Baker/
Trademark Examining Attorney
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jordan.baker@uspto.gov

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For technical assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

- The California Energy Commission, *Home Energy Rating System (HERS) Program*, <http://www.energy.ca.gov/HERS/> (accessed July 11, 2008).
- [2] Energy Star, *What Is The HERS Index?* http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_HERS (accessed July 11, 2008)
- [3] Northeast Home Energy Rating System Alliance, *Index Page*, <http://www.energyratings.org> (accessed July 11, 2008)
- [4] USA HERS Home Energy Rating Services, *Index Page*, <http://www.usahers.com> (accessed July 11, 2008)



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Proceeding Information

- » HERS Pre-Rulemaking
Docket# 08-HERS-1

HERS Information

- » HERS Main Page
- » HERS Booklet
- » Notice of HERS Provider Approval

Related Information

- » Title 24 Building Standards
- » CalCERTS
California Certified Energy Rating & Testing Services
- » CBPCA
California Building Performance Contractors Association
- » CHEERS
California Home Energy Efficiency Rating System

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Home Energy Rating System (HERS) Program

The California Energy Commission is initiating pre-rulemaking activities for Phase II of the California Home Energy Rating System (HERS) Program. Please see the [Pre-Rulemaking page](#) for Phase II documents.

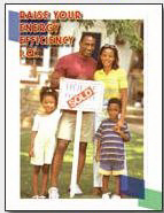
The California Energy Commission is required by Public Resources Code Section 25942 to establish regulations for a Home Energy Rating System (HERS) Program to certify home energy rating services in California. The goal of the program is to provide reliable information to differentiate the energy efficiency levels among California homes and to guide investment in cost-effective home energy efficiency measures.

The California HERS Program includes field verification and diagnostic testing available through Commission-certified providers. The Energy Commission has a process for certifying Home Energy Rating System (HERS) raters who perform third-party inspections when verification of duct sealing, thermostatic expansion valves (TXVs), refrigerant charge, airflow measurement, and building envelope sealing measures are used when complying with the 2005 Standards (effective October 1, 2005). Testing and verification protocols are summarized and located in both the Residential and Nonresidential Field Verification and Diagnostic Testing Regulations Manuals.

- » [Home Energy Rating Systems \(HERS\) Field Verification and Diagnostic Testing Regulations](#)
(Acrobat PDF, 114 pages, 2.1 megabytes).
- » [Acceptance Requirement and Home Energy Rating Systems \(HERS\) Field Verification and Diagnostic Testing Regulations](#)
(Acrobat PDF, 113 pages, 4.1 megabytes).

ANNOUNCEMENTS

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06-HERS-1

Phase I regulations establishing field verifications and diagnostic testing services administered by HERS providers became effective on June 17, 1999. The California Certified Energy Rating & Testing Services (CalCERTS), California Building Performance Contractors Association (CBPCA), and the California Home Energy Efficiency Rating System (CHEERS) have been approved by the Commission as HERS providers to oversee HERS raters providing Title 24 field verification and diagnostic testing. People interested in becoming certified HERS raters should contact [CalCERTS](#), [CBPCA](#), or [CHEERS](#).

Staff is currently evaluating possible rating options before initiating a Phase II rulemaking.

For More Information Contact:

The Energy Efficiency Hotline
(800) 772-3300 or (916) 654-5106

ARCHIVED DOCUMENTS

[HERS PROGRAM REGULATIONS](#). On line: June 23, 1999, (Acrobat PDF file, 8 pages, 37 kilobytes).

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State of California, Arnold Schwarzenegger, Governor

Last Modified: 07/07/08

**Renee Inomata**

RE: United Football League marks Jordan,
Thanks so much for letting me know.



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What is the HERS Index?

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For more information, visit the [RESNET Web site](#) [EXIT](#) .

Comparing the New HERS Index with the Old HERS Score

For homes rated before July 1, 2006, the rating score is known as a "HERS Score." The HERS Score is a system


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in which a home built to the specifications of the HERS Reference Home (based on the 1993 Model Energy Code) has a HERS Score of 80. Unlike the HERS Index, each 1-point increase in a HERS Score is equivalent to a 5% increase in energy efficiency. Please see the table below for a comparison of the HERS Score and the HERS Index.

	HERS Score	HERS Index
Reference Home Score	Reference Home is assigned a HERS Score of 80	Reference Home is assigned a HERS Index of 100, while a net zero energy home is assigned a HERS Index of 0
Reference Home Basis	1993 Model Energy Code (MEC)	2006 International Energy Conservation Code (IECC)
Scale	Each 5% <i>increase</i> in energy efficiency corresponds to a 1-point <i>increase</i> in HERS Score	Each 1% <i>increase</i> in energy efficiency corresponds to a 1-point <i>decrease</i> in HERS Index
Energy Use Considered	Heating, cooling, and water heating	Heating, cooling, water heating, lighting, appliances, and onsite power generation*
ENERGY STAR Requirement	HERS Score 86	HERS Index of 85 in climate zones 1–5 HERS Index of 80 in climate zones 6–8
Status	Phasing out	Approved by the RESNET Board of Directors. To be implemented as of July 1, 2006.

* Note that although onsite power generation is included in the RESNET HERS Index, it cannot be used to decrease a HERS Index to qualify for ENERGY STAR.

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NORTHEAST HOME ENERGY RATING SYSTEM ALLIANCE



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ANNOUNCEMENTS:

MONTHLY MEMBER CALL SCHEDULE

(Held the second Wednesday of every month, 3:30 - 5:00 PM)

Call in number for 2008
1-800-610-4500
Then enter code 6-3-4-3-7-7-#

Schedule of Upcoming Calls:

July - None being held due to vacations

August 13 - Richard Faesy, Mike DeWein, and Others
Topic: Energy Star Used as the Minimum Building Code

Future Calls:
Sep. 10, Oct. 8, Nov. 12, Dec. 10

[Downloadable content](#) for some of the calls can be found [here](#).

Send in your topic ideas for future calls [here](#).

NEXT MEETING DATES TRAINING

NEXT NE HERS RATER TRAININGS

- **Remaining Training dates for 2008 are:**
October 20-24 - NH Community Technical College, Laconia, NH

To receive information about these or future classes, [contact us](#) with your name, company name, address, phone, and email.

MEMBERSHIP IN THE NE HERS ALLIANCE FOR 2008

If you are interested in membership in NE HERS, we appreciate a broad range of support across the region to address the important issues facing our industry and to be able to provide excellent training and resources. New members are always welcome! For information on NE HERS Membership go to our [Who We Are](#) page.

NE HERS 2007 RATER TRAINING AND REFERENCE MANUAL

The Northeast HERS Alliance 2007 Rater Training and Reference Manual is available for individual and discounted multi-copy orders. Among other updates, the 300+ page manual incorporates new RESNET and HERS industry technical requirements, EPA Energy Star compliance changes, and information pertaining to the 2005 Energy Policy Act: Tax Credits for builders.

For contents, a sample technical sub-section, pricing, and ordering, you may download a sample and order form [LICRC](#).

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USA HERS Home Energy Rating Services

ENERGY STAR

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The average house is responsible for more air pollution than the average car!
You've Heard Claims That a House is Energy Efficient - A Certified Home Energy Rating System (HERS) Report is The Only Way to Prove It. **"The Best Test - The Rest Guess".**



Do you want to "Guess" about Energy Efficiency in your dream home.

world to do it in. Buying a home that has earned the ENERGY STAR is like making a down payment on a cleaner world. [Click here to contact us](#)

All ENERGY STAR qualified new homes are certified to meet EPA's strict guidelines for energy efficiency. This exemplary performance is verified by an independent third party.

Lower Utility Costs

Do you want to "Guess" about Energy Efficiency in your dream home. If you "Guess", and you "Guess" wrong, "Guess" what happens to your Energy Dollars. Don't just "Guess", test before buying a new home.

Do You Look at the MPG Sticker Before You Buy a New Car? Before You Purchase Your Next Home, Why Not Find Out What It Will Cost for Electricity?

USA HERS Home Energy Rating Services is a Florida State Certified Home Energy Rating System (HERS) rater. You've probably heard about home inspections (we do those too), a HERS testing and evaluation of a home you want to buy will tell you much more. Well, a HERS rating will tell you what to expect in annual energy costs, it will give you information concerning your heating and cooling costs, hot water costs, and much more. [Click here to see a sample EnergyGauge report.](#) Additionally, you may qualify for an Energy Efficient Mortgage (EEM) which will give you more buying power and potentially better terms. Check out our Home Buyers Resources, we've got lots of good information that show you how to save money. Besides you'll be helping the environment at the same time.

Buying a New Home - Look For The ENERGY STAR

ENERGY STAR® qualified homes are at least 30% more energy-efficient than homes built to the national energy code. Even in states with more rigorous energy codes, the U.S. EPA ensures that ENERGY STAR remains the symbol for truly energy efficient performance. USA HERS Home Energy Rating Services works with ENERGY STAR Builders to verify and test new construction homes from start to finish. An ENERGY STAR Builder will be able to provide you with a certified HERS Rating and EEM documentation. [Click here to get a copy of "Will Your New Home Really be Energy Efficient?"](#).

Our "KID" Friendly Builder Program is Committed to a Cleaner World

At USA HERS Home Energy Rating Services, we are proud to provide home rating (HERS) services to qualify new and existing homes for the ENERGY STAR® label. These homes are good for businesses, consumers, and the environment. Learn more about ENERGY STAR qualified new homes here or at <http://www.energystar.gov/>. **Attention Builders - gives us a call and we'll come by and provide you with all the details about becoming an ENERGY STAR Builder.**

Home Energy Ratings Systems (HERS) Ratings

A HERS rating is an evaluation of the energy efficiency of a home, compared to a

A HERS rating is an evaluation of the energy efficiency of a home, compared to a computer-simulated reference house of identical size and shape as the rated home that meets minimum requirements of the International Energy Conservation Code (IECC). The HERS rating results in a score between 0 and 100, with the reference house assigned a score of 80. From this point, each 5% reduction in energy usage (compared to the reference house) results in a one point increase in the HERS score. Thus, an ENERGY STAR qualified new home, required to be significantly more energy-efficient than the reference house, must achieve a HERS score of at least 85.*

HERS ratings involve the analysis of a home's construction plans and at least one on-site inspection of the home. The construction plan review allows the home energy rater to attain technical information such as orientation, shading area, proposed SEER rating, insulation levels, etc. The on-site inspection includes a **blower door test** (to test the leakiness of the house) and a **duct test** (to test the leakiness of the ducts). Results of these tests, along with inputs derived from the construction plan review, are entered into a computer simulation program that generates the HERS score and the home's estimated annual energy costs.

*Typically, ENERGY STAR qualified new homes are at least 30% more energy-efficient than standard homes. However, depending on the rigor of an individual state's energy code, this percentage may vary.

Sample Reports

Take a look at some of the reports we have available. These reports cover code compliance through sales and financing. We think you'll be impressed with the array of support we can provide that meet your specific needs.

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